

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF4046
)	EEOC NO.: N/A
LUIS MANUEL LOPEZ)	ALS NO.: 09-0699
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Rozanne Ronen, and Nabi Fakroddin, upon Luis Manuel Lopez's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF4046; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. On April 3, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent, which he subsequently perfected on January 2, 2009. The Petitioner alleged in his charge that his former employer United Temps, Inc., ("Employer") discharged him because of his alleged physical disability, back disorder, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On October 29, 2009, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On December 2, 2009, the Petitioner filed a timely Request.
2. The Petitioner worked as a Laborer for United Temps, Inc., ("Employer"). On February 6, 2008, the Employer discharged the Petitioner. The reason the Employer gave for discharging Petitioner was that he left the work site without returning.
3. The Petitioner alleged in his charge that the Employer actually discharged him because he was disabled and alleged that he had been disabled since December 2007, and that the Employer was aware of his alleged disability.
4. When the Petitioner filed his charge with the Respondent, the Respondent provided the Petitioner with a medical questionnaire to be completed by a physician. Based on the answers provided by the physician in the medical questionnaire, the Respondent would determine if the

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

Petitioner was disabled within the meaning of the Act. Further, it was the Petitioner's burden to establish that he was disabled within the meaning of the Act at the time of the adverse action before the Respondent could investigate his disability discrimination claim.

5. The Petitioner returned the completed medical questionnaire to the Respondent. The Petitioner's physician indicated that the Petitioner's back disorder (his alleged disability) was temporary or transitory, and it was not significantly debilitating or disfiguring. The physician stated he had last treated the Petitioner on March 14, 2008. The form was completed December 30, 2008.
6. 56 Ill. Admin. Code, Ch. II, §2500.20(b)(1), states in pertinent part that under the Act, the definition of a "disability" excludes..."conditions that are transitory and insubstantial and conditions that are not significantly debilitating or disfiguring."
7. Pursuant to §2500.20(b)(1), the Respondent determined that the Petitioner was not disabled within the meaning of the Act because his back disorder was temporary, transitory, and not significantly debilitating or disfiguring. For that reason the Respondent dismissed the charge for lack of jurisdiction.
8. In his Request, the Petitioner states he is still experiencing back pain, and in November 13, 2009, his physician referred him to a chiropractor, who recommended that the Petitioner see a neurosurgeon.
9. In its Response, the Respondent argues the Petitioner is not disabled within the meaning of the Act, and asks the Commission to sustain its dismissal of the Petitioner's charge for lack of jurisdiction.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of jurisdiction. If the Petitioner's condition does not meet the definition of disability under the Act, there must be a finding of lack of jurisdiction. See 775 ILCS 5/1-103(I).

While the Petitioner asserts that he continues to experience back pain, the Respondent based its determination on the medical evidence the Petitioner submitted to it in December 2008. In December 2008, the only evidence the Petitioner submitted to the Respondent stated that the Petitioner's back disorder was temporary, transitory, and not significantly debilitating, and thus excluded from the conditions which qualify as "disabilities" under the Act.

Furthermore, the Petitioner has not submitted any other evidence to substantiate his claim that he was a disabled person on or before February 6, 2008, the date the Employer discharged him. Without any evidence that the Petitioner was disabled on or before February 2008, the Petitioner cannot maintain his disability discrimination claim against the Employer.

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Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and United Temps, Inc., as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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Entered this 9th day of June 2010.

Commissioner Munir Muhammad

Commissioner Rozanne Ronen

Commissioner Nabi Fakroddin